



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 29, 2017

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

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FROM: Adav Noti *AN*
Associate General Counsel
Policy Division

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SUBJECT: Draft Final Audit Report on the American Financial Services Association PAC
(LRA 1034)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report ("proposed DFAR") on the American Financial Services Association PAC (AFSAPAC). The proposed DFAR contains two findings: Misstatement of Financial Activity (Finding 1), and Excessive Contributions Made to Federal Candidates (Finding 2). We concur with the findings and comment on them below. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. AUDIT DIVISION SHOULD CLARIFY AND ADDRESS ISSUES IN ANALYSIS

In Finding 1 of the proposed DFAR, the Audit Division concludes that AFSAPAC misreported its financial activity when compared to its bank records for receipts, disbursements and ending cash balances for 2013 and for beginning and ending cash balances for 2014. AFSAPAC asserted, in response to the Interim Audit Report ("IAR"), that its misstatements were all timing related and they blamed, in part, "staff limitations & the difficulty in working with the FEC file software." AFSAPAC Response to IAR. The Audit Division has no further information on this assertion and only references the assertion in the proposed DFAR.

The proposed DFAR does not make clear whether AFSAPAC is asserting that its staff merely had difficulty using the FEC's software, or that the software actually malfunctioned in some way. If AFSAPAC is making the latter assertion, additional discussion might be warranted in the proposed DFAR. The Commission may consider reasonably unforeseen or mitigating factors in certain enforcement matters, which may include computer-related problems pertaining to the Commission's computers and Commission-provided software. *Cf.*, 11 C.F.R. § 111.35(c); Administrative Fines, 65 Fed. Reg. 31,787, 31,789-31,790 (May 19, 2000) (Failure of Commission computers or Commission-provided software despite committee seeking technical assistance from Commission personnel and resources is reasonably unforeseen circumstances beyond control of committee using best efforts to timely file reports). Therefore, if AFSAPAC is claiming that the Commission's software failed, we recommend that the Audit Division revise the proposed DFAR to address the merits of AFSAPAC's assertion of software problems and ask AFSAPAC for more information and details regarding the problems with the Commission's software. If necessary, such details might include whether the Commission's IT department, the Reports Analysis Division, or any other Commission personnel who handle Commission disclosure software issues have any record of AFSAPAC contacting them with problems regarding the Commission's software system.

In Finding 2 of the proposed DFAR, the Audit Division addresses apparent excessive contributions made to federal candidates, but makes no conclusions or recommendations at this stage of the audit. We recommend that the Audit Division revise the proposed DFAR to clarify the discussion and include a conclusion regarding this finding.

The proposed DFAR states that 11 contributions made to seven federal candidate committees, when aggregated with 22 other contributions, appear to exceed the contribution limitation by \$18,000. The proposed DFAR also notes AFSAPAC's responses. In response to the exit conference, the Committee contends that it redesignated the contributions for all \$18,000 of the excessive contributions. AFSAPAC, however, only produced redesignation letters apparently sent out to the recipient committees, for \$17,000 of the \$18,000 amount.

The Audit Division does not make any conclusions in the proposed DFAR regarding the underlying issue of whether the excessive contributions were redesignated. We recommend that the Audit Division revise the proposed DFAR to indicate whether the documentation that AFSAPAC provided to the Audit Division is sufficient to verify these redesignations or whether

additional verification is needed.¹ If the documentation is insufficient, the Audit Division should state the deficiencies. And whichever result the Audit Division reaches — i.e., that the documentation is or is not sufficient — we recommend that the proposed DFAR include an explicit conclusion regarding this finding.

¹ The contributor's intent to redesignate is apparent in a signed letter submitted by the contributor to the recipient committee. See Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 763 (Jan. 9, 1987) (written redesignations signed by the contributor ensure donor intent).